

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE:)
MICHAEL J. DELANEY)
Debtor,)
)
J. BRIAN MOORE) CIVIL ACTION NO. 04-10393 NG
LAURA M. MOORE,)
Plaintiffs,)
)
vs.)
)
DAVID B. MADOFF, TRUSTEE IN)
BANKRUPTCY FOR MICHAEL J.)
DELANEY; GERRITY COMPANY,)
INCORPORATED; CAPE COD)
LUMBER CO., INC.; SAMPSON)
LUMBER CO., INC.; C.N.J., INC.)
D/B/A WHITMAN CARPET & TILE;)
NORTH RIVER PLUMBING;)
HEATING & WATER FILTRATION;)
P.A. LANDERS, INC.;)
COMMONWEALTH OF)
MASSACHUSETTS, DEPARTMENT OF)
REVENUE; KEVIN KILEY and)
SUSAN KILEY; SCOTT KEARNS and)
SANDRA KEARNS & TOWN OF)
PEMBROKE, DELANCON)
CORPORATION, MATTHEW)
DELANEY, PAMELA E. INGHAM f/k/a)
PAMELA E. DELANEY, MICHAEL)
J. DELANEY, TRUSTEE OF THE)
QUAIL RUN REALTY TRUST)
and MICHAEL DELANEY,)
Defendants.)

APPELLANTS' DESIGNATION OF CONTENTS OF RECORD
AND STATEMENT OF ISSUES

To the Honorable Nancy Gertner, United States District Court Judge:

NOW COME the Appellants, J. Brian Moore and Laura M. Moore, and having filed a Notice of Appeal do hereby designate as contents of the record on appeal. For ease in identification, references in this designation are to the record designated in the appeal from the United States Bankruptcy Court:

1. The Complaint (Docket Entry #1);
2. The Answer of the Trustee, David B. Madoff (Docket Entry #13);
- 3.. The Answer of the Gerrity Company (Docket Entry #18);
4. The Answer of the Town of Pembroke (Docket Entry #22);
5. December 10, 2002 Order, Kenner, J. (Docket Entry #23);
6. December 12, 2002 Pre-Trial Order, Kenner, J. (Docket Entry #24);
7. Gerrity Company Motion for Summary Judgment (Docket Entry #28);
8. Gerrity Company Memorandum of Law in support of Summary Judgment (Docket Entry #29);
9. Opposition of the Moores' to Gerrity Motion for Summary Judgment (Docket Entry #33);
10. Affidavit of James F. Creed, Jr. in Support of Opposition to Summary Judgment (Docket Entry #34);
11. April 16, 2002 Memorandum of Decision and Order on Motion for Summary Judgment (Docket Entry #39);
12. Moores' Response to Court's Order to Show Cause Why the Complaint Should not be Dismissed (Docket Entry #43);

13. Supplement to the Moores' Response (Docket Entry #45);
14. Supplement to the Moores' Response (Docket Entry # 46);
15. Statement of the Gerrity Company Relative to the Moores' Response (Docket Entry #47);
16. May 22, 2003 Order to Amend the Complaint, Kenner, J. (Docket Entry #48);
17. Amended Complaint (Docket Entry #49);
18. Answer to the Amended Complaint of the Gerrity Company (Docket Entry #55);
19. Answer to the Amended Complaint of the Town of Pembroke (Docket Entry #59);
20. July 8, 2003 Endorsed Order, Kenner, J. (Docket Entry #61);
21. July 8, 2003 Pre-Trial Order, Kenner, J. (Docket Entry #62);
22. Answer to Amended Complaint of Michael J. Delaney (Docket Entry #70);
23. Gerrity Company Motion for Expedited Trial (Docket Entry #72);
24. July 30, 2003 Endorsed Order, Kenner J. (Docket Entry #73);
25. Answer to the Amended Complaint of Pamela E. Ingham (Docket Entry #77);
26. Gerrity Company's Third Motion for Expedited Trial (Docket Entry #79);
27. Answer to the Amended Complaint of Michael J. Delaney (Docket Entry #80);
28. September 2, 2003 Endorsed Order, Kenner, J. (Docket Entry #83);
29. September 2, 2003 Order Setting Trial Date, Kenner, J. (Docket Entry #84);
30. Pre-Trial Statement of Moores (Docket Entry #86);
31. Pre-Trial Statement of the Gerrity Company (Docket Entry #87);
32. Pre-Trial Statement of the Town Of Pembroke (Docket Entry #88);

33. Moores' Request for Admissions of the Gerrity Company (Docket Entry #89);
34. Gerrity Company Answers to Moores' Requests for Admissions (Docket Entry #90);
35. Moores' Notice of Filing Admissions (Docket Entry #91);
36. Gerrity Company Notice of Objections to Plaintiffs' Exhibits (Docket Entry #96);
37. Gerrity Company Memorandum of Law (Docket Entry #97);
38. Gerrity Company Response to Moores' Notice of Filing Admissions (Docket Entry #98);
39. Moores' Motion for Leave to Amend their Pre-Trial Statement (Docket Entry #99);
40. Affidavit of James F. Creed, Jr. (Docket Entry #100);
41. Moores' Amended Pre-Trial Statement (Docket Entry #101);
42. Moores' Response to Gerrity Company's Notice of Objections to Proposed Exhibits (Docket Entry #102);
43. Gerrity Company's Motion in Limine (Docket Entry #104);
44. Gerrity Company Memorandum in Support of Motion in Limine (Docket Entry #105);
45. November 24, 2003 Endorsed Order, Kenner, J. (Docket Entry #106);
46. November 24, 2003 Endorsed Order, Kenner, J. (Docket Entry #108);
47. November 24, 2003 Endorsed Order, Kenner, J. (Docket Entry #109);
48. Pre-Trial Conference Set for 12/2/2003 (Docket Entry #110);
49. Trial Scheduled for 12/5/2003 (Docket Entry #111);

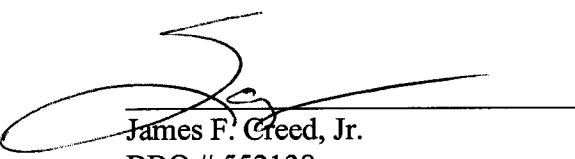
50. Court's Certificate of Mailing ##s 108, 109, 110 and 111);
51. November 24, 2003 Endorsed Order (Docket Entry #116);
52. Notice of Unavailability of Party Defendant (Docket Entry #113);
53. Affidavit of James F. Creed, Jr. (Docket Entry #114);
54. Moores' Response Memorandum of Law on the Scope of 11 USC 365(i)(Docket Entry #117);
55. December 2, 2003 Order Regarding the Moores' Motion to Amend their Pre-Trial Statement, Kenner, J. (Minutes Order on Pretrial Conference) (Docket Entry #118);
56. December 29, 2003 Judgment for Defendant against Plaintiff (Docket Entry #125);
57. December 29, 2003 Memorandum of Decision re: Judgment Dated 12/29/03 (Docket Entry #126);
58. Transcript of Pre-Trial Conference (Docket Entry #131);
59. Notice of Appeal (Docket Entry #134);
60. Election of Appeal to the District Court (Docket Entry #135).
61. Certified Copy of Docket.

The issues on appeal are, as follows:

1. The propriety of the Court's determination that the provisions of 11USC §365(i), under which the Moores claimed, require that there be equity for the bankrupt estate in order to allow the Moores their right to complete the purchase of real estate pursuant to the terms of their purchase and sale agreement with the Debtor;

2. The propriety of the Court's determination that the US Trustee's duties under the provisions of 11USC §365(i), as claimed by the Moores, are discretionary;
3. The propriety of the Court's determination that the provisions of 11 USC §365(i) cannot be implemented under 11 USC §363(b), or otherwise, absent an equity stake for the bankrupt estate;
4. The propriety of the Court's *sua sponte* entry of judgment in the Adversary Proceeding, absent a motion, notice or request from any party or Court to the action requesting such relief, thereby denying Plaintiffs the opportunity to prepare and respond to final disposition on the merits;
5. The Propriety of the Court's determination that the Moores' claim under 11 USC §365(i)(2)(B) was moot.

Respectfully submitted,
For the Appellants,
By their Attorneys,



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J. DELANEY, TRUSTEE OF THE)
QUAIL RUN REALTY TRUST)
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 Defendants.)
)
)

CERTIFICATE OF SERVICE

I, Deborah Rizzotto, hereby certify that I caused a true copy of the APPELLANTS' DESIGNATION OF CONTENTS OF RECORD AND STATEMENT OF ISSUES ON APPEAL, to be served on the following by first class mail, postage prepaid:

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Deborah Rizzotto

Dated:

6/9/05